Statement of

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Ranking Democrat, House Subcommittee on
Telecommunications and the Internet
Hearing on Barton-Upton Staff Draft
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Good Morning. On September 15th, after 8 months of negotiations on the part of staff for Chairman Barton, Ranking Member Mr. Dingell, Chairman Upton, Mr. Pickering, and myself, a bipartisan, consensus staff draft was released. That draft, while not perfect, was balanced and designed to treat all parties equitably. It was offered as a starting point from which we could reflect on suggested changes from all affected parties and refine the draft through discussion and continued bipartisan collaboration.

I want to thank Chairman Barton for the process over those months which led to that bipartisan, consensus staff draft. I am dismayed by the process, however, over the last several days that has led to this hearing and to the latest staff draft, which is neither consensus nor bipartisan. While I understand that some may see the unveiling of the new Barton-Upton draft as moving the process forward, I think it's quite the opposite. On both the overall substance and the process, the Barton-Upton draft represents a significant step backward, and in my view, brings us further away from successfully legislating in this area, not closer.

The new staff draft eliminates a provision that extended the prohibition on cable operators and telephone companies buying each other out in-region. This has been the foundation of competition in this Committee for many years. The cable industry challenges the phone industry and the phone industry challenges the cable industry. It is a vital engine of progress for which this Committee has been justifiably proud. While many of us may lament the prospect of a broadband duopoly in many communities, at least it's a duopoly. Deleting the provision which ensures competition between the cable and telephone industries is a terrible policy decision.

The Barton-Upton draft also reduces consumer protections required for national standards by the FCC from 11 areas to 4 areas. And it also adjusts the fundamental definitions in the bill. For instance, the BITS definition is changed in a way which raises questions as to whether resellers or aggregators of broadband service have any rights, or any obligations to abide by network neutrality principles, consumer privacy protections, or consumer protection rules generally.

The Broadband Video Service definition is changed in a way that makes the platform which delivers the service a potential vehicle for discrimination. The Internet is a wonderfully chaotic, open, worldwide network, a platform for innovation and an economic engine for the country. I don't understand why we would tinker with a model that has been so wildly successful and embraced by thousands of companies and millions

of individuals, in order to slant public policy in favor of 3 companies simply so they can deliver movies to people's homes.

"*My Own Private Idaho*" was a movie, it's not supposed to be an articulation of America's broadband policy.

The Barton-Upton draft also changes the basis for calculating franchise fees for municipalities, a shift which will have negative financial consequences for communities across the country and that undercuts financial support for public access television channels. In addition, the Barton-Upton draft deleted the placeholder that had been in the consensus draft that would have addressed the question of the extent and timeliness of the telephone companies offering broadband video service to both rural and underserved urban and suburban communities.

The Barton-Upton draft also departs in a major way from the consensus draft by changing the obligations of Bell company video services from statutory responsibilities to mere regulations. In other words, the rules governing must-carry, sports blackouts, closed captioning, indecency rules, television content ratings, ownership limits, consumer equipment compatibility, equal employment opportunity rules, program access, closed captioning, and others can now be waived by the Commission upon request by the Bell companies. If that were not sufficient to tilt the playing field enough, the draft adds an additional provision requiring the FCC every 4 years to eliminate any such rules when it finds, in its subjective judgment, meaningful economic competition.

I am willing, as I have been throughout the year, to negotiate in good faith and to develop a consensus piece of legislation. I am dismayed that the promising path that the five member offices were on toward that goal has been abandoned in the last week for what I see as a detour toward a likely legislative dead end.

I thank the Chairman for calling today's hearing and look forward to hearing from our witnesses.

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